

DEMOV, MORRIS & HAMMERLING

ATTORNEYS AT LAW  
40 WEST 57TH STREET  
NEW YORK, N.Y. 10019

(212) 757-5050  
CABLE DECAMOLAW  
TELEX ITT 424291  
TELECOPIER 757-6562

14643  
RECORDATION NO. \_\_\_\_\_ Filed 1425  
MAY 6 1985 - 10 00 AM  
INTERSTATE COMMERCE COMMISSION

May 3, 1985

Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Attention: Mrs. Mildred Lee, Room 2303

Re: Recordation of Railroad Leases

Dear Mrs. Lee:

I am enclosing two railroad car leases to be filed with the Interstate Commerce Commission. In that connection, enclosed please find the following documents:

1. An originally executed Lease Agreement dated October 5, 1984, by and between American Leasing Investors, a California limited partnership with a place of business at 733 Third Avenue, New York, New York 10017, and Cargill Incorporated, a Delaware corporation with a place of business at 715 East 13th Street, Wichita, Kansas 67201. Pursuant to this Lease Agreement, American Leasing Investors is leasing to Cargill Incorporated 65 4,650 cubic foot one hundred ton capacity four pocket covered hopper railroad cars for a monthly lease rate per railroad car of \$190.90. This Lease Agreement terminates on October 6, 1985.

2. A photocopy of the Lease Agreement described in Item 1 above, notarized by Walter Hinton, a Notary Public, as being a true and correct copy of the originally executed Lease Agreement.

3. An originally executed Lease Agreement dated October 22, 1984, by and between American Leasing Investors, a California limited partnership with a place of business at 733 Third Avenue, New York, New York 10017, and Northwestern Oklahoma Railroad Co., an Oklahoma corporation with a place of business at 125 East Lake Street, Suite 100, Bloomington, Illinois 60108. Pursuant to this

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Interstate Commerce Commission  
May 3, 1985  
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Lease Agreement, American Leasing Investors is leasing to Northwestern Oklahoma Railroad Co. 61 4,650 cubic foot one hundred ton capacity four pocket covered hopper railroad cars for a lease rate per railroad car as described in paragraph 2 of the Lease Agreement. This Lease Agreement terminates on December 31, 1986.

4. A photocopy of the Lease Agreement described in Item 3 above notarized by Walter Hinton, a Notary Public, as being a true and correct copy of the originally executed Lease Agreement.

5. A check in the amount of \$20.00 payable to the Interstate Commerce Commission, representing the \$10.00 filing fee for each of the Lease Agreements referred to in Items 1 and 3 above.

Please acknowledge receipt of the enclosures by stamping and returning to me, in the enclosed self-addressed envelope, the duplicate copy of this letter enclosed herewith. Please call me if you have any questions.

Very truly yours,

*Nancy C. Wallace*  
Nancy C. Wallace

NCW/jd

Enclosures

cc: Mr. Benjamin Jung  
Jonathan M. Harris, Esq.  
Craig S. Medwick, Esq.

RECEIPT ACKNOWLEDGED:

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Mrs. Mildred Lee

RAILROAD CAR LEASE AGREEMENT

RECORDATION NO. 14643  
MAY 6 1985 - 10 05 AM  
INTERSTATE COMMERCE COMMISSION  
Filed 1425

AGREEMENT made and entered into this 22nd day of October, 1984, between American Leasing Investors, hereinafter called "Lessor", and Northwestern Oklahoma Railroad Co., a corporation with a mailing address of: 125 East Lake Street, Suite 100, Bloomington, Illinois 60108.

RECITALS

Lessee desires to lease from Lessor certain railroad cars hereinafter specifically designated, all upon rentals, terms and conditions set forth in this Railroad Car Lease Agreement, hereinafter referred to as the "Lease".

AGREEMENT

It is Agreed:

1. Lease of Cars. Lessor agrees to lease to Lessee and Lessee agrees to and does hereby lease from Lessor, railroad cars of the number of units, model type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 attached hereto and by this reference made a part hereof and as set forth in Schedules which may from time to time be added to this Lease and thereby made a part hereof. The Lease shall become effective as to any Car immediately upon placement in interchange service and shall continue on all Cars so delivered or Cars which are substituted for such Cars that are delivered until terminated by Lessor or Lessee by 60 day written notice following the termination of this agreement on December 31, 1986. It is understood that the Cars will be assigned to the Southern Pacific Transportation Company ("SPTC") under the terms of the SPTC letter dated September 21, 1984 attached as Exhibit A.

2. Rental. The Lessee shall pay to the Lessor an amount equal to all per diem, mileage, incentive per diem and demurrage payments which Lessee is entitled to receive from all the railroad companies by reason of the utilization of the Cars on such other railroad companies' lines as set out in the Interchange Rules and which actually have been collected by Lessee less the \$8.00 per month, or any part thereof, per Car retainable by Lessee pursuant to Paragraph Four.

3. Payment. Lessee shall make payment of all sums due hereunder to Lessor at such places as Lessor may from time to time direct. Lessee shall furnish to Lessor a report of all per diem, mileage, incentive per diem and demurrage payments to which it has become entitled by the use of such Cars on the lines of other railroads as soon after each calendar month as possible and in any event within 70 days after the end of each calendar month. Payment of the amount of the rental due hereunder shall be made at the same time such reports are furnished.

4. Servicing and Fee. Lessee will exert its best efforts to collect and police all per diem, mileage, incentive per diem, and demurrage payments due to Lessee from other railroad lines by reason of the utilization of the Cars on such other railroad lines but shall not be responsible in the event any such amounts are not collected. Lessee will diligently prosecute all claims against other railroads who fail to promptly pay the proper per diem, mileage, incentive per diem, and/or demurrage payments required to be paid to Lessee by reason of the Interchange Rules. Lessee will also assist the Lessor in the preparation of any damage claims which the Lessor may have because of any damages that may occur to the Cars during the term of this Lease. The Lessor hereby agrees with the Lessee that the Lessee may deduct from the rental due to the Lessor by reason of Paragraph Two of this Lease an amount equal to \$8.00 per month, per Car or any part thereof while each Car is in service on the line of another railroad. A one time initial fee of \$500.00 will be paid to the Lessee by Lessor to cover initial filing and accounting start-up costs. Such deductions shall be shown upon the report due from the Lessee to the Lessor as required in Paragraph Three of this Lease. To facilitate the above, the Lessee will place their reporting marks on the Cars at Lessor's expense. Cars under the Lease that are placed in storage from time to time shall be the responsibility of the Lessor and all transportation and storage costs shall be paid by the Lessor to the Lessee.

5. Repairs. Lessee shall promptly notify Lessor when any Car requires heavy repair and all such repair costs shall be the responsibility of the Lessor. At Lessor's direction Lessee will arrange for such repairs with billing for cost of repairs sent directly to Lessor. Repair costs arising from Interchange Rules will be the responsibility of Lessor.

6. Substitution or Termination of Cars. Lessor may, at any time and from time to time, replace any Car and substitute therefore a replacement Car which shall thereafter be treated in the same manner as if the replacement Car had been the Car originally furnished. Lessor may, at any time and from time to time terminate this Lease as to any Car covered by this Agreement. Lessor shall pay all costs of placing and/or removing Cars to and from assignments during the term of this Lease.

7. Taxes. Lessor will be liable for all Federal, state or other Governmental taxes imposed or duties assessed or levied against the Cars.

8. Assignment and Sub-letting. Lessee shall not have the right to assign, sub-lease, or loan the Cars, except in accordance with the direction of the Lessor.

9. Liens. Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee, other than those which arise out of repairs

performed under Interchange Rules, which may be a cloud upon or otherwise affect Lessor's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease and Lessee shall promptly discharge any such lien, encumbrance or legal process.

10. Indemnity. Lessor agrees to indemnify the Lessee and hold it harmless from any loss, expense or liability which the Lessee may suffer or incur from any charge, claim, proceeding, or other event which in any manner or from any other cause arises in connection with the use, possession or operation of a Car while subject to this Lease excepting the Lessee's responsibility as outlined by the Interchange Rules while Lessor's Car is on the Lessee's right-of-way or upon specific Agreement herein contained. Lessor will carry liability insurance in the amount of \$5,000,000.00 and show Lessee as a named insured as regards to this Lease.

11. Lessor will have the right upon ten (10) days written notice to change assignments with respect to any Car covered by the Lease and Lessor shall pay all costs of such changes.

12. Upon expiration of this Lease with respect to any Car, or as to all of the Cars, Lessee will exert its best efforts to obtain a Car Service Rule Five movement and surrender possession by delivering Car or Cars to designated point as directed by Lessor. All costs of such re-delivery shall be the responsibility of Lessor.

13. Default. If Lessee shall fail to make any payment required under this Lease within 20 days after same shall have become due or shall default or fail for a period of 20 days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part under this Lease, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events Lessor may at its election terminate this Lease by written notice to such effect and retake the Cars and thereafter recover as any exclusive remedy liquidated damages of \$10,000 for loss of a bargain and not as a penalty in addition to all rental unpaid as of said date.

14. Sublease and Assignment. All rights of either party under this Lease may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with the consent of the other party. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to the terms and conditions of any lease, chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars

heretofore or hereafter created by Lessor including without limitation that Security Agreement dated as of August 15, 1979 between Lessor as Debtor and Harriscorp Leasing Inc. as secured party, provided only that so long as Lessee is not in default under the Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars. In the event that Lessee receives notice that Lessor has assigned its rights under this Lease with respect to Cars subject to a particular Schedule, Lessee shall, if requested in writing by Lessor or such assignee, make separate payment of rentals and other sums due with respect to such Cars to such place and person as Lessor or such assignee shall from time to time designate. The making of an assignment or sublease by Lessee or an assignment by Lessor shall not serve to relieve such party of any liability or undertaking under this Lease nor to impose any liability or undertaking under this Lease upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

15. Opinion of Counsel. Upon the request of Lessor or its assignee, Lessee will deliver to Lessor an opinion of counsel for Lessee, addressed to Lessor or its assignee in form and substance satisfactory to counsel for Lessor or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporated power and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

(d) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder.

16. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, depositing in the United States mail, registered or certified, postage prepaid, addressed to:

Integrated Resources Equipment Group, Inc.  
733 3rd Avenue  
New York, New York 10017  
Attention: Vice President - Administration

or at such other addresses as Lessor may from time to time designate by such notice in writing and to Lessee at the address

first above written or any such other address as Lessee may from time to time designate by notice in writing.

17. Governing Law-Writing. The terms of this Lease and all rights and obligations under this Lease shall be governed by the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

18. Counterparts. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

19. Severability-Waiver. If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of Lessor to exercise any rights under this Lease shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

20. Terminology. In construing any language contained in this Lease, no references shall be made and no significance given to paragraph title, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

21. Definition. For all purposes of this Lease "Interchange Rules" shall have the following meaning:

"Interchange Rules" - all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

22. Benefit. Except as otherwise provided in this Lease the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefits of the parties and (to the extent permitted) their successors and assigns.

23. Recording. Upon request by Lessor, Lessee shall join in the execution of a memorandum or short form of this Lease for use in recordation under Section 20c of the Interstate Commerce Act or such other recordation as Lessor deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate the Lease by reference.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Railroad Car Lease Agreement as of the day and year first above written.

AMERICAN LEASING INVESTORS

By William H. Sawyer

By ALI Equipment Management Corp.  
Managing General Partner

ATTEST:

Miriam Rodriguez  
Secretary

NORTHWESTERN OKLAHOMA RAILROAD CO.

By Chris W. Damiano

Chris W. Damiano, President

ATTEST:

Bobby White  
Secretary Pro Tem



SCHEDULE I

Equipment Description

<u>Description</u>	<u>Number of Cars</u>	<u>Car Markings</u>
4,650 cubic foot, 100 ton capacity, four pocket covered hopper railcars built in 1979 by National Steel Car.	61	NOKL 14165-14168 14170-14188 14190-14215 14217-14228

# **Southern Pacific Transportation Company**

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

MARKETING AND SALES DEPARTMENT

September 21, 1984

Mr. Edward A. Garvey  
Director, Equipment Management  
Helm Financial Corporation  
One Embarcadero Center  
San Francisco, CA 94111

Dear Ed:

This letter is Southern Pacific's acceptance of your September 18, 1984 offer to lease sixty-one (61) covered hopper cars. The specifics of the lease Agreement are understood as follows:

- Lease rate is maximum of \$0.40 per hour when loaded only while on the lines of SP/SSW. Mileage will be payable at current rates. Cars will be free of per diem charges while empty on the lines of SP/SSW.
- Lessor will receive all off-line carhire earnings.
- If the aggregate fleet of leased cars averages \$199.00 or less per car per month in lease charges during any sixty (60) consecutive day time period, Lessor has the right to reduce the number of cars covered by this Agreement.
- Term of this Agreement is through December 31, 1986.
- Lessee agrees to store the cars free of charge up to sixty (60) days following termination of this Agreement.
- Lessee will deliver cars free of charge to those SP/SSW junction points specified by the Lessor following termination of this Agreement.
- Lessor will deliver cars to Lessee at Hutchinson, KS or Kansas City, MO clean and suitable for grain service.
- If requested, Lessee will restencil cars and Lessor agrees to be responsible for the cost of such restenciling work.
- Lessor will be responsible for all administrative, car accounting, and maintenance expenses during the term of this Agreement.

Mr. Edward A. Garvey  
Page 2  
September 21, 1984

It is our further understanding that all cars are of 4650 cubic foot, 100 ton capacity and were built in 1979 by National Steel Corp. All cars have polyclutch interior lining.

All cars will be stencilled "NOKL" at Lincoln Grain Company at Atchison, KS and forwarded to the SSW at Kansas City via the MP. Cars will have the following numbers:

NOKL 14165 - 14168  
14170 - 14188  
14190 - 14215  
14217 - 14228

Please forward car numbers to Mr. R. R. Applegate of our Transportation Department prior to delivery.

It is a pleasure working with you, Ed. Call me if you have any questions.

Sincerely,



Mark W. Zuercher  
Manager, Equipment Planning  
Bulk Service Equipment

-MWZ/llw

cc: Mr. D. A. Smith  
Mr. R. T. Lenz  
Mr. R. R. Applegate  
Mr. D. C. Lowe  
Mr. R. R. Kottke

CERTIFICATE

I, Walter Hinton, a Vice President of ALI Equipment Management Corp. and a Notary Public, hereby certify that the photocopy of the Lease Agreement annexed hereto by and between American Leasing Investors, a California limited partnership, and Northwestern Oklahoma Railroad Co., an Oklahoma corporation, is a true, correct and complete copy of the original of such Lease Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 30th day of April, 1985.

*Walter H. Hinton*

Walter Hinton, Vice President  
of ALI Equipment Management  
Corp. and a Notary Public

WALTER H. HINTON II  
Notary Public, State of New York  
No. 31-4789832  
Qualified in New York County  
Term expires March 30, 1987